

Downtown Commission Meeting  
Minutes of November 13, 2009  
1st Floor North Conference Room - City Hall

**Members Present:** Chairman Jesse Plaster; Vice-Chair Dwight Butner, Vice-Mayor Jan Davis, Mr. John D. Rogers, Ms. Kitty Love, Mr. Brian Greiner and Ms. Pamela Myers

**Absent:** Mr. Guadalupe Chavarria, Mr. Peter Alberice and Mr. Brad Galbraith

Chairman Plaster called the meeting to order at 8:40 a.m. and reviewed the agenda.

**Administrative**

- ? Mr. Butner asked that the September 11, 2009, minutes be amended as follows: (1) adding Mr. Greiner as a member to the Downtown Management subcommittee; and (2) adding Mr. Butner as a member of the Transportation and Parking subcommittee. Mr. Greiner moved to approve the amended September 11, 2009, minutes. This motion was seconded by Mr. Butner and carried unanimously.
- ? Mr. Greiner moved to approve the minutes of the October 9, 2009, meeting. This motion was seconded by Ms. Love and carried unanimously (with Chairman Plaster abstaining from voting due to absence at that meeting).

**Update on Implementation Committees**

Ms. Sasha Vrtunski, Downtown Master Plan Project Manager, noted said that the Action Committee has met and broken into Subcommittees. They have now have started setting their meetings as follows: The Downtown Management Subcommittee will be meeting on November 20; the Arts Committee will be meeting on November 20 and December 4; the Transportation and Parking Subcommittee will be meeting on December 2; and the Historic Preservation Subcommittee decided to use an on-line tool to determine a meeting date (but tentatively it's December 3).

After discussion, initiated by Ms. Love, it was the consensus of the Commission to have monthly updates of each Subcommittee by the Commission member assigned to that Subcommittee. Ms. Love suggested each Subcommittee have its own google.doc page. It was the consensus of the Committee to have Ms. Vrtunski place a link on the City's webpage to the google.doc site for public review of all documents.

In response to Ms. Love, Ms. Vrtunski said that she would send the Commission members an e-mail once all Subcommittee meeting dates and times are set, along with rosters (including possible additional members). Even though each Subcommittee has a staff person assigned to it, Ms. Vrtunski would like to continue to be involved in order to assure things are moving forward in a healthy way.

Ms. Vrtunski said that during the planning process, former Downtown Commission Chair Pat Whalen took on the informal role of being Chair of the Advisory Committee monitoring the process. Because there will be 4-5 vacancies soon, she felt it would be helpful to have someone in that role. Vice-Mayor Davis suggested someone whose term is up soon may be interested in that role. Chairman Plaster felt that Mr. Galbraith might be a good candidate for this role. Vice-Mayor Davis also suggested Mr. Rogers. Mr. Rogers said that he would be happy to take on this role, but felt it may be more appropriate to wait until new members are appointed. Mr. Butner wondered if it would be prudent to have someone familiar with this process, rather than someone who is not.

In response to Chairman Plaster, Vice-Mayor Davis explained the City Council appointment process. He said that the Commission members remain appointed until their successors have been appointed – which following the City Council schedule would be January 26, 2010.

### **UDO Changes – Process for Project Review & Thresholds**

Urban Planner Alan Glines said that the Urban Design & Development Subcommittee has been meeting weekly for two months focusing on process changes in Strategy 6. The Subcommittee is now working on Strategies 4 and 5 (design requirements for development).

Urban Planner Julia Cogburn said the first thing that Subcommittee dealt with was how to implement the process of project review. She provided the Commission members with a matrix showing the specific recommendation for Strategy 6, the current practice, the proposed amendment, and the Design Action Committee recommendation. After this discussion, she hoped to add another column to the matrix for the Downtown Commission recommendation. She asked for a consensus vote in order to bring it before City Council. After City Council gives their direction, staff will then develop the ordinance. She then briefly reviewed following matrix:

<b>Related Action Step from DTMP</b>	<b>Current UDO Requirement</b>	<b>Proposed Amendment</b>	<b>Design Action Committee</b>
<b>6A1</b> –Large projects require early developer sponsored community meetings.	It is highly recommended that the developer meet with representatives of the neighborhood in which the proposed project is located.	Add new Section 7-5-9(d) on procedures for projects within the DDR Overlay District. In this, place the requirement that Level II and III projects require a community meeting. Add to new section, that a community meeting is also encouraged for Level I projects.	Consensus agreement with proposal.
<b>6A2</b> – All official review meetings should have advertised opportunity for public attendance and input.	Current requirements are that all official review meetings are advertised except DTC.	In new Section 7-5-9(d) continue language that states that all official review meetings be advertised. New language for DTC notification in ordinance.	Consensus agreement with proposal.
<b>6C1</b> – Revise project level definitions; alter the level thresholds for downtown proposals.	Current UDO levels are same for all districts. Level III nonresidential (except industrial and as listed below) over 100,000 square feet; commercial and mixed-use within ½ mile of the CBD if over 45,000 square feet; residential over 50 units or lots. Level II – Industrial over 100,000 square feet; nonresidential (except as listed below) – 35,000 to 100,000 square feet; 20-50 dwelling units; nonresidential in residential district – over 10,000. Level I – all others except sf dwellings and accessory structures.	In new Section 7-5-9(d) indicates that levels within the DDR Overlay District will be as follows: Level III – Above 175,000 square feet or above the Intermediate Height Zone. Level II – 20,000 to 175,000 square feet and up to the Intermediate Height Zone. Level I – Less than 20,000 square feet. Leave additions as they are.	Consensus agreement with proposal. Exact levels to be discussed with design considerations.
<b>6C2</b> - Require formal written findings detailing how project does or does not meet requirements.	Current practice is to provide formal written findings.	In new Section 7-5-9(d) make it clear that at each step in the process, formal written reports will be prepared indicating compliance or noncompliance with requirements.	Consensus agreement with proposal.
<b>6C3</b> - Level I – Downtown – staff function (various departments) including design review.	Currently Level I projects are staff-only (various departments) function.	Will place continued practice in new Section 7-5-9(d).	Consensus agreement with proposal.
<b>6C4</b> – Level II - Downtown – TRC, DTC, P and Z.	Currently Level II projects go to DTC first then to TRC.	In new Section 7-5-9(d) add information on order of process. Process will begin with TRC, go to DTC, and end with P and Z. Amend or delete Section 7-5-10(b) (6) to reflect new process.	Consensus agreement with proposal.

<b>6C5- Level III – Downtown – TRC, DTC, P and Z, and City Council.</b>	Currently Level III projects go first to DTC then to TRC, then to P and Z and then to Council as CUP	In new Section 7-5-9(d) add information on order of process. Process will begin with TRC; go to DTC, next to P and Z, and end at City Council. Amend or delete Section 7-5-10(b)(6) to reflect new process.	Consensus agreement on steps in process. See 6D for type of review decision.
<b>6D – Apply the CUP process only to projects requesting variances from allowed uses.</b>	Currently all Level III projects are treated as CUPs allowing City Council the ability to evaluate a project more broadly, and add conditions to any approval granted.	In new Section 7-5-9(d) add information on order of process, as noted above, and standards by which a project is reviewed.	Consensus of the Committee is to respect the DTMP for all large projects, except those in the downtown "core." Except in the "core", projects will go to Council but will only be evaluated on technical merits. All Level III projects in the "core" will require conditional zoning approval. The "core" and exact levels are being discussed with design considerations.
<b>6E – Large development proposals with phased components should submit master plan .</b>	Currently the ability to submit a master plan exists but is not required.	Add requirement for phased plan to new Section 7-5-9(d).	Consensus agreement with proposal.
<b>6I – Establish a specific time limit between submission and written findings for each project review step.</b>	Recently the Downtown Commission adopted a change to their bylaws concerning project review. The new provision states that the Commission may not delay a project for more than 120 days without the consent of City Council. For Level II and III projects, TRC is required to take action within ten days of review of plans. Level I projects have a ten day turnaround. No real time limitations for Level III and P and Z and Council but indicated order of events at these reviews.	Add 120 day limit to new Section 7-5-9(d) and also to Section 7-5-10(b)(6).	Consensus agreement with proposal.
<b>6J - Allow project sponsors to choose project review by Council if: 1) Project review by other commissions has extended past the time limit identified above; 2) Design approval has been denied for not meeting standards; 3) In lieu of making a contribution to the Community Benefits Fund.</b>	Currently there is no process in place to allow project sponsors to choose project review by Council as indicated in DTMP.	See staff recommendation.	Consensus agreement with staff recommendation.
<b>Variances</b>	Currently variances from UDO requirements are heard by the Board of Adjustment. The DTC can modify guideline requirements as they are voluntary in terms of compliance. Council can grant modifications to certain UDO requirements as part of a CUP or CZ review.	The DTMP did not address variance requests. The UDAC wanted to discuss for clarity.	Consensus agreement with staff recommendation.

<b>Appeals</b>	Appeals from staff review go to the BOA. There are no appeals from DTC as compliance is voluntary. Appeals from P and Z go to Council. Appeals from Council go to the courts.	The DTMP did not address appeals. The UDAC wanted to discuss for clarity.	Consensus agreement with staff recommendation.
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Regarding developer sponsored community meetings (6A1), Ms. Love felt strongly that a developer should adhere to specific standards for the developer-sponsored meetings, i.e., be required to (1) place an ad in the paper; (2) post the site; (3) send notices to anyone within 200 feet of the project approximately 10 days before the meeting; and (4) any other diligent outreach similar to meeting that City staff holds.

In response to Mr. Rogers about the number of developer sponsored community meetings, Urban Planner Glines said that there would be at least one mandatory developer sponsored community meeting. Ms. Myers also said we may need to specify a number around different aspects of the project, depending on the size. The developer needs to give the community a reasonable opportunity to respond.

Regarding Level III projects (6D), Ms. Cogburn said that staff's concern is what is City Council reviewing for and on what basis could they deny a project. This recommendation came out of concern that the Conditional Use Permit (CUP) process gave City Council a wide range of discretion and power over design review. The Downtown Master Plan (DTMP) called for more stringent rules with greater certainty in approval. This recommendation also was meant to address the concern over City Council not being able to get information on a project until the public hearing (which is quasi-judicial in nature). Questions arose in discussion over how to review larger projects over concerns that the largest projects would only be reviewed by Council on technical merits. City Council wouldn't be able to turn something down if it met all the technical merits, but they may have some negotiation tools. There was considerable discussion to get to the consensus of the Design Action Committee on this action step.

In response to Mr. Rogers, City Attorney Oast provided the Commissioners with the definitions of conditional zoning and conditional use permit.

Mr. Butner felt we promised the community a reliable merit based design review development process. But, what is coming out of the Design Action Committee is a review process that maintains subjectivity vs. objectivity in the core of downtown. He felt we have introduced the exact concern we have been trying to avoid – which is a subjective, coercive development process in the core of the City of Asheville. This is a contradiction of the Downtown Master Plan.

Ms. Love questioned what the standards would be when the project goes to Council for the character and harmony questions in the core. She wondered how much flexibility City Council would have. Ms. Cogburn said that issue is what the Design Action Committee wrestled with. This becomes purely a legislative decision. Obviously the project still has to meet the technical standards, but then Council would be looking at if it fits.

Vice-Mayor Davis questioned why we would have a Level III project review by City Council if the project was just going to be reviewed on technical merits. He felt the public elected City Council to make those hard-call decisions. Ms. Cogburn noted that was staff's initial concern. They wondered why are we putting Council through this review process when the project has already gone to the Technical Review Committee and the Planning & Zoning Commission. It's like we're making someone go to one other body. The really only value would be if City Council could have some negotiating tools. She felt we are not talking about that many projects, especially in the core area. Ms. Vrtunski also responded that our biggest problem in our

community is in the core. It's not a technical issue for people, but an emotional issue. Most, but not all, of the core is in the intermediate height zone so most projects in the core should be intermediate heights, but they could be Level III if they are really larger – over 175,000 square feet.

In response to Mr. Butner, Mr. Rogers said that the Design Action Committee is very reluctant in changing the numbers for the Level II review. Ms. Cogburn felt that the Design Action Committee would not have been comfortable in recommending this change if more things were put into Level III, again noting that there have been only a very small number of projects in the core.

Chairman Plaster said this recommendation was recognized as a compromise because there are people in the community who want a greater say in the planning and development process and developers want a more streamlined path.

In response to Ms. Love when she asked if some standards can be developed for City Council to judge the project on, Vice-Mayor Davis said that Council uses the seven conditional use standards. Ms. Vrtunski also noted that we are making sure that the seven conditional use standards are reviewed ahead of time, so there is no surprise when the project gets to Council.

In response to Ms. Love, Ms. Bernstein said that if the Downtown Commission does not want to support the idea of conditional zoning for Level III (or any other recommendation), then the column on the matrix will reflect that. Staff is only asking for the Commission to support their direction or ask for more detail. After the Planning & Zoning Commission review, another column will be added to the matrix with their recommendation. When the matter goes to City Council, they will have the entire picture of recommendations from each body. Planning & Development Director Judy Daniel noted that Planning staff will not be asking City Council for a vote either. Staff is only taking segments to Council for their evaluation and recommendation. Once all segments have been reviewed, a vote would then be taken.

Mr. Butner did not want the Level III process turned into a horse-trading event in the core area.

Regarding a leap-frog review process (6J), Ms. Cogburn said that staff recommended that no changes be made at this time reflecting this strategy. The Downtown Commission time limit on review should address much of the concern. The discussions on a Community Benefits Fund are to take place at a later time. The Design Action Committee agreed with staff's recommendation.

There was a brief discussion, initiated by Ms. Love about the reason behind Strategy 6J. Mr. Butner recalled that if there was something arbitrary at some level that went beyond the 120 days, that they would have the right to go on to Council. Urban Planner Glines noted that Council would not have any reviews, so they would likely deny the project, or remand it back to a specific committee. Chairman Plaster said it was the consensus of the Design Action Committee that this is not a good idea and should be left as is. He also couldn't think of a project that wouldn't benefit from going through the same deliberate process. Vice-Mayor Davis didn't think Council would want to look at a project that hadn't gone through the process.

Regarding variances, Ms. Cogburn said that staff recommended that the ordinance be written so that in the Downtown Design Review area, staff can flex up to 10% on standards concerning setbacks, openings, and expanses of wall. All other variance requests go to the Planning & Zoning Commission with the exception of landscaping requests, which go to the Tree Commission (alternative compliance review). The Design Action Committee agreed with staff's recommendation.

Regarding appeals, Ms. Cogburn said that staff recommended that appeals from staff or the Downtown Commission go to the Planning & Zoning Commission. Appeals from the Planning & Zoning Commission go to City Council. Appeals from City Council go to the Courts. The Design Action Committee agreed with staff's recommendation.

When Chairman Plaster noted the importance of the definitions of the 3 levels, Ms. Cogburn said that exact levels will still be discussed by the Design Action Committee with design considerations.

Vice-Mayor Davis noted that he has concerns of City Council being only a technical review body for large projects in the core area.

Mr. Butner moved to support the recommendations of the Design Action Committee. This motion was seconded by Mr. Greiner and carried unanimously.

#### **Downtown Association Update**

Mr. Greiner updated the Commission on the 63rd Annual Asheville Holiday Parade on November 21, 2009, at 11:00 a.m.

#### **Pack Square Update**

Ms. Myers updated the Commission as follows: (1) provided the Commissioners with the Pack Square Conservancy Frequently Asked Questions from October 19, 2009; (2) the Veterans Memorial at Pack Square Park was dedicated on November 11, 2009; (3) the mid-Park (where most of the work is happening now) will hopefully will be turned over to the City after the first of the year; (4) members of the Management Team are working closely with the City and County on Memorandums of Understanding about how park policies and programs will be handled; (5) the fountains will be off during the winter; (6) the Conservancy is continuing to raise money to complete the construction and build the endowment; and (7) the decision about the Pavilion is that the mid-park will be complete up to the Pavilion perimeter line and the Pavilion footprint will be grassed; and when the money is raised for the Pavilion they will re-start that part of the project.

Ms. Myers responded to Mr. Greiner on the Conservancy's role in operating the Park in terms of events. After a brief discussion, Ms. Myers suggested Cultural Arts Superintendent Diane Ruggiero be invited to update the Commission regarding rules and regulations of the Park.

Mr. Rogers moved to reappoint Ms. Myers to the Pack Square Conservancy Board as the Downtown Commission representative. This motion was seconded by Vice-Mayor Davis and carried unanimously. Ms. Myers was honored to accept the role at least through Park completion.

#### **Downtown Task Force Update**

Mr. Glines noted that he previously provided the Commission with the September 28, 2009, notes from the Downtown Task Force. He particularly noted (1) the Seasonal Sizzle at Seven fireworks on the last three weekends in December; (2) Eagle-Market Street Corporation is working on a development agreement; and (3) the Hotel Indigo on Haywood Street is open.

### **Downtown Commission Membership**

Ms. Monson then reviewed the Commission members term expiration dates. She said that since Mr. Butner is a County appointee, she contacted the County Clerk and was informed that the Commissioners have that appointment on their December agenda. She said it was normal for them to reappoint members who have served a partial term. She would be happy to relay a recommendation to the County Commissioners, if the Commission desires.

Regarding the City Council appointments, Mr. Chavarria is the only person eligible for reappointment by City Council. There are 3 more term expirations, along with the vacancy left by Mr. Harry Weiss. She has e-mailed the Commission the first set of applications (from Mr. Weiss' vacancy) and would providing the Commission with the remaining applications to the Commission at their January 8, 2010, meeting (as the deadline is January 6, 2010). She encouraged the Commission to contact qualified individuals and ask they submit an application. At the January 8 meeting she will be asking for recommendations on who they would like City Council to consider for interviews or a recommendation on specific needs or types of people the Commission needs. On January 12 City Council will decide on who to interview, with interviews and appointments on January 26, 2009. She noted the people who are now serving will continue to serve until their successors have been appointed. She suggested the Commission's annual retreat be held in either February or March in order to give the new members time to get acclimated organizationally.

Chairman Plaster wondered if there was a way to stagger the terms so that not so many terms expire at the same time. Ms. Monson said that this is uncommon, however; she would talk with the City Clerk about that issue.

In response to Mr. Rogers, Vice-Mayor Davis said that City residency is a requirement. He asked the Commission to be fairly concise in their recommendations due to the number of seats vacant and the potential number of interviews.

### **Downtown Design Review Guidelines**

Mr. Glines explained why the Downtown Design Review Subcommittee asked that this be rescheduled. Chairman Plaster suggested the Commission wait until after City Council has made a decision about the Unified Development Ordinance changes and whatever is left, roll some of those into the Downtown Design Review Guidelines.

### **Miscellaneous**

Urban Planner Stephanie Monson updated the Commission that the Office of Economic Development will be physically moving their offices to City Hall on December 4-6, 2009. Economic Development Director Sam Powers is now the Economic Development Director and the Civic Center Director. She felt there will be a realignment of the Civic Center as an asset for downtown and how we can keep it as an economic driver.

Vice-Mayor Davis encouraged the public to attend Disney on Ice at the Civic Center.

Ms. Monson also noted that the Asheville City Market will be relocating to Pack Square (due to the fireworks for the Seasonal Sizzle at Seven) for the last four weeks in the year, noting that City Council waived their relocation fees. They will be closing Pack Square for those four weeks in December from 8:00 p.m. - 1:00 a.m. When Ms. Myers was concerned that organizations in that area should have been informed about those closures, Ms. Monson suggested she contact Ms. Diane Ruggiero about the closure plan.

Ms. Monson said that the Urban Design & Development Subcommittee has been anxious about modeling and the efforts the City has looked at with 3-D modeling. She said that the Office of Economic Development has been working with RENCI for a few months on 3-D modeling of the Haywood site project. Additionally, she co-chairs the City's GIS Steering Committee and that group has been looking at creating 3-D modeling. If Chairman Plaster would be willing to work with Ms. Bernstein and Mr. Glines over the next few months, she would like to update the Urban Design & Development Subcommittee and the Downtown Commission.

#### **Adjournment**

Chairman Plaster adjourned the meeting at 10:35 a.m.